ECHR: "ARMENIAN GENOCIDE IS A CLEARLY ESTABLISHED HISTORIC FACT"

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Today the European Court ruled that the applicant's freedom of speech should not have been restrained because it was not likely to incite violence or racial hatred. Thus Perincek should not have been prosecuted by the Swiss authority because his rant, in the Turkish language, would have had no impact at all on social harmony and race relations in Switzerland.

Armenia intervened in the case for one reason: the lower court had cast doubt on the fact that a genocide against the Armenian people occurred in 1915. As counsel we sought to correct this grave error, and the Grand Chamber has done so. Today's judgment did not dispute the fact of the Armenian genocide: ten judges said the question should not have been addressed at all whilst seven stated that "the Armenian genocide is a clearly established historic fact".

The judgment also upholds the Armenians' right under European law to have their dignity respected and protected, including by recognition of a communal identity forged through suffering from the annihilation of over half their race by the Ottoman Turks (see para 227).

The court's decision upholding the importance of freedom of expression has important consequences for Turkey, which has the worst record of any state before the European Court on free speech. Turkey can no longer justify prosecuting those like Hrant Dink who are accused of "insulting Turkishness" contrary to article 301 of the Penal Code by writing about the reality of the Armenian genocide. These prosecutions are plainly contrary to the free speech guarantee under article 10 of the European Convention on Human Rights as interpreted in the Perincek case. We call on Turkey to abolish article 301 and cease malicious prosecutions pursued on its terms.

Perincek is a provocateur who should not have been made the martyr that he was so keen to become. We note that the Court rejected his demand for 120,000 euro compensation, and awarded him nothing – not even his own legal fees."

Earlier ECHR ruled there had been a violation of Article 10 (freedom of expression) of the European Convention on Human Rights, thus the petition filed by Switzerland was rejected.

International Institute for Genocide and Human Rights Studies
A Division of the Zoryan Institute

PRESS RELEASE

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European Court of Human Rights Confirms the 1915 Massacres and Mass-Deportations of Armenians by the Ottoman Empire

Strasbourg, France-- The European Court of Human Rights delivered a Grand Chamber judgment in the case of Perinçek v. Switzerland at a public hearing today, October 15, 2015.

The lead counsel for the NGO Coalition (Turkish Human Rights Association, Truth Justice Memory Centre and International Institute for Genocide and Human Rights Studies), Professor Payam Akhavan of McGill University in Canada, a former UN prosecutor at The Hague, emphasized that the Court's Judgment "clearly, unanimously, and emphatically confirmed the historical truth" of the 1915 Armenian Genocide. In a divided opinion, the majority of ten judges held that the Swiss judgment against Mr. Perinçek's denial and minimization of these events violated his freedom of speech under

the European Convention on Human Rights. However, seven judges, including the President of the Court, held that "the massacres and deportations suffered by the Armenian people constituted genocide is self-evident. The Armenian genocide is a clearly established historical fact. To deny it is to deny the obvious." The majority of ten judges also confirmed "the massacres and mass deportations suffered by the Armenian people at the hands of the Ottoman Empire from 1915 onwards" and only differed in its view that it "has not authority to make legally binding pronouncements" on whether these events "can be characterized as genocide within the meaning of that term under international law".

Mr. Perinçek himself did not deny that these atrocities did in fact take place, but simply denied their characterization as "genocide" and blamed the 1.5 Armenian victims for their own fate by portraying them as "traitors" and "aggressors". The majority found that his statements should not have been penalized by the Swiss courts, because they did not pose a threat to Armenians in Switzerland. Professor Akhavan noted that in doing so, "the majority did not give sufficient weight to the convincing evidence submitted by the NGO Coalition, demonstrating Mr. Perinçek's racist motives by reference to his previous conduct in Turkey, and its impact on the vulnerable Armenian minority that has been subjected to a campaign of hate speech and violence." He emphasized that "this aspect of the decision is unfortunate at a time when there is an alarming increase in ultra-nationalist hate speech and violence in Turkey. The fact that Mr. Perinçek leads the Talaat Pasha Committee (named after the "Ottoman Hitler") that the European Parliament has characterized as a 'xenophobic and racist' organization, is itself the most obvious evidence of his discriminatory motives." Professor Akhavan regretted moreover, that the majority disregarded the Istanbul Penal Court's finding in the Ergenekon trial that Mr. Perinçek had incited hatred and violence against Armenians, on the grounds that instead of relevant excerpts, the NGO Coalition should have produced the full 17,000 page judgment!

The dissenting opinion of the seven judges, including that of the President, is highly significant, in asking:

Why should criminal sanctions for denial of the characterization of the massacres of Armenians in Turkey in 1915 as "genocide" constitute a violation of freedom of expression, whereas criminal sanctions for Holocaust denial have been deemed compatible with the Convention?

According to Professor Akhavan, "the divided opinion of the Grand Chamber, and the alarming increase in extremist violence in Turkey, is the clearest indication that the question of racist hate speech against Armenians is far from resolved, and that it will require constant vigilance. What is clearly established by the Judgment however, is unanimity among all seventeen judges, that the Armenians did in fact suffer massacres and mass deportations at the hands of the Ottoman Empire from 1915 onwards, irrespective of its legal characterization one way or another."

The Zoryan Institute and its subsidiary, the International Institute for Genocide and Human Rights

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